

Neil M. Zipkin (NZ 4718)
 Holly Pekowsky (HP 5034)
 AMSTER, ROTHSTEIN & EBENSTEIN LLP
 90 Park Avenue
 New York, New York 10016
 (212) 336-8000
 Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

----- -X
 DAN-DEE INTERNATIONAL, LTD,
 Plaintiff,

v.

KB TOYS (US), INC., KB TOYS, INC., AND A&T
 INDUSTRIAL, INC.,
 Defendants.

:
 : Civil Action No. 08-cv-5540
 : (RPP)(RLE)
 :

: **APPLICATION FOR CLERK TO**
 : **PROVIDE CERTIFICATE OF**
 : **DEFAULT BY THE KB**
 : **DEFENDANTS PURSUANT TO**
 : **FEDERAL RULE OF CIVIL**
 : **PROCEDURE 55(a) AND LOCAL**
 : **CIVIL RULE 55.1**
 :
 ----- -X

Plaintiff in the above-identified action hereby applies to have the Clerk of the Court enter a Certificate of Default by Defendants KB Toys (US), Inc. and KB Toys, Inc. ("the KB Defendants"), pursuant to Federal Rule of Civil Procedure 55(a) and Local Civil Rule 55.1.

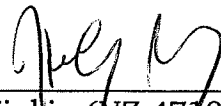
Submitted herewith in support of such application is an Affidavit of the undersigned which it is submitted, in combination with the Affidavits concerning service of the Summons and Complaint and the Individual Practices of Judge Robert P. Patterson, Jr. and Magistrate Judge Ronald L. Ellis on the KB Defendants attached thereto, conforms to the requirements of Rule 55(a) Fed. R. Civ. P. and Rule 55.1 of the

Local Civil Rules of this Court for the Clerk to provide the Certificate of Default applied for.

Briefly, the Summons and Complaint were served on the KB Defendants on June 23, 2008 and they have not answered or otherwise moved in response to the Complaint.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Plaintiff
90 Park Avenue
New York, New York 10016
(212) 336-8000

By: 
Neil M. Zipkin (NZ 4718)
Holly Pekowsky (HP 5034)

Dated: New York, New York
August 11, 2008

CERTIFICATE OF SERVICE

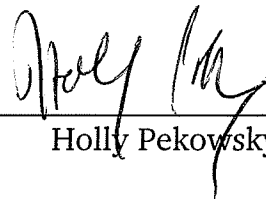
It is hereby certified that on the date below, the undersigned served a true and correct copy of Plaintiff Dan-Dee International, Ltd's Application For Clerk To Provide Certificate Of Default By the KB Defendants Pursuant To Federal Rule Of Civil Procedure 55(A) And Local Civil Rule 55.1, by regular United States mail, postage prepaid, upon each of the parties listed below:

KB Toys (US), Inc.
100 West Street
Pittsfield, MA 01201

KB Toys, Inc.
100 West Street
Pittsfield, MA 01201

Ryan L. Isenberg, Esq.
Isenberg & Hewitt, P.C.
7000 Peachtree Dunwoody Road
Building 15, Suite 100
Atlanta, Georgia 30328
Counsel for A&T Industrial, Inc.

Dated: New York, New York
August 11, 2008



Holly Pekowsky

Neil M. Zipkin (NZ 4718)
Holly Pekowsky (HP 5034)
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 Park Avenue
New York, New York 10016
(212) 336-8000
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAN-DEE INTERNATIONAL, LTD,
Plaintiff,

V.

KB TOYS (US), INC., KB TOYS, INC., AND A&T
INDUSTRIAL, INC.,

Defendants.

Civil Action No. 08-cv-5540
(RPP)(RLE)

**AFFIDAVIT OF HOLLY
PEKOWSKY IN SUPPORT OF
APPLICATION FOR CERTIFICATE
OF DEFAULT BY THE KB
DEFENDANTS**

[illegible]

Holly Pekowsky, being duly sworn, deposes and says:

1. I am an associate attorney at Amster, Rothstein & Ebenstein LLP, counsel for plaintiff Dan-Dee International, Ltd (“Plaintiff”) in this action. I make this affidavit in support of Plaintiff’s application for a certificate of default against defendants KB Toys (US), Inc. and KB Toys, Inc. (“the KB Defendants”) pursuant to Rule 55(a), Fed. R. Civ. P. and Rule 55.1, Local Civil Rules on the grounds that the KB Defendants have failed to

plead or otherwise defend this action. Unless otherwise indicated, I have personal knowledge of the facts set forth herein.

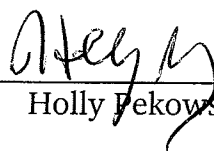
2. The KB Defendants were personally served with copies of the Summons and Complaint and the Individual Practices of Judge Robert P. Patterson, Jr. and Magistrate Judge Ronald L. Ellis on June 23, 2008. The KB Defendants have not answered or otherwise moved as to the Complaint, and the time within which the KB Defendants were to answer or otherwise move expired on July 14, 2008.

3. The Summons and Complaint were properly served upon the KB Defendants as set forth in the Affidavits of Service by James M. Kane, annexed collectively as Exhibit A.

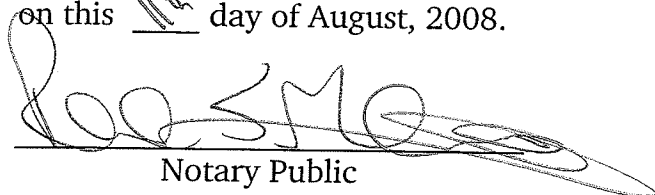
4. The KB Defendants are not infants, in the military or incompetent persons.

5. Pursuant to the provisions of 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 11, 2008


Holly Dekowsky

Sworn and subscribed to before me
on this 11th day of August, 2008.


Notary Public

RICHARD S. MANDARO
NOTARY PUBLIC, State of New York
No. 02MA5078355
Qualified in Nassau County
Commission Expires June 16, 2011

CERTIFICATE OF SERVICE

It is hereby certified that on the date below, the undersigned served a true and correct copy of Plaintiff Dan-Dee International, Ltd's Affidavit Of Holly Pekowsky In Support Of Application For Certificate Of Default By the KB Defendants, by regular United States mail, postage prepaid, upon each of the parties listed below:

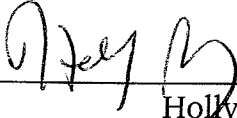
KB Toys (US), Inc.
100 West Street
Pittsfield, MA 01201

KB Toys, Inc.
100 West Street
Pittsfield, MA 01201

Ryan L. Isenberg, Esq.
Isenberg & Hewitt, P.C.
7000 Peachtree Dunwoody Road
Building 15, Suite 100
Atlanta, Georgia 30328

Counsel for A&T Industrial, Inc.

Dated: New York, New York
August 11, 2008



Holly Pekowsky

EXHIBIT A

001.02.2008 11:44 2129410235

DLS NY

#0105 P.003 /003



Demovsky Lawyer Service

Premier Nationwide Document Retrieval
and Process Service Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAN-DEE INTERNATIONAL, LTD.,

Plaintiff,

Case No. 08 CV 5540
(Judge Patterson)

-against-

AFFIDAVIT OF SERVICE

KB TOYS (US), INC., KB TOYS, INC., AND A&T
INDUSTRIAL, INC.,

Defendants.
-----X

STATE OF MASSACHUSETTS)

S.S.:

COUNTY OF BERKSHIRE)


JAMES M. KANE, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 23rd day of June, 2008, at approximately the time of 2:40 PM, deponent served a true copy of the SUMMONS IN A CIVIL CASE; COMPLAINT; INDIVIDUAL PRACTICES OF JUDGE ROBERT P. PATTERSON, JR.; AND INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE RONALD L. ELLIS upon KB TOYS, INC. at 100 West Street, Pittsfield, MA, by personally delivering and leaving the same with COLLEEN McGRATH who informed deponent that she holds the position of Legal Agent with that company and is authorized by appointment to receive service at that address.

COLLEEN McGRATH is a white male, approximately 40 years of age, stands approximately 5 feet 6 inches tall, weighs approximately 160 pounds with brown hair.


JAMES M. KANE, Constable

Sworn to before me this
3 day of July, 2008


NOTARY PUBLIC

JUL 02 2008 11:44 2129410235

DLS NY

#0105 P.002 /003



Demovsky Lawyer Service

Premier Nationwide Document Retrieval
and Process Service Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAN-DEE INTERNATIONAL, LTD.

Plaintiff,

-against-

KB TOYS (US), INC., KB TOYS, INC., AND A&T
INDUSTRIAL, INC.,

Defendants.

STATE OF MASSACHUSETTS)

S.S.:

COUNTY OF BERKSHIRE)


JAMES M. KANE, being duly sworn, deposes and says that he is over the age of
eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 23rd day of June, 2008, at approximately the time of 2:40 PM, deponent
served a true copy of the SUMMONS IN A CIVIL CASE; COMPLAINT; INDIVIDUAL
PRACTICES OF JUDGE ROBERT P. PATTERSON, JR.; AND INDIVIDUAL PRACTICES
OF MAGISTRATE JUDGE RONALD L. ELLIS upon KB TOYS (US), INC. at 100 West Street,
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JAMES M. KANE, Constable

Sworn to before me this
3 day of July, 2008


NOTARY PUBLIC